

Update: Sexual Assault Benchbook

CHAPTER 3

Other Related Offenses

3.7 Child Sexually Abusive Activity

A. Statutory Authority

3. Possession of Child Sexually Abusive Material

Effective December 28, 2004, 2004 PA 478 amended MCL 750.145c. The amendments added computer technicians to the list of people that are exempt from MCL 750.145c(4). In the March 2003 update to page 132, replace the quoted paragraph (a) with the following quote:

“(a) A person described in [MCL 752.367 (governing exemptions from first- and second-degree obscenity)], a commercial film or photographic print processor acting pursuant to subsection (8), or a computer technician acting pursuant to subsection (9).*” MCL 750.145c(4)(a).

*(MCL 750.145c(8) and MCL 750.145c(9) create immunity from civil liability and protect as confidential the identity of a commercial film or photographic print processor or a computer technician who reports a depiction of a child engaged in a listed sexual act to a law enforcement agency.

CHAPTER 9

Post-Conviction and Sentencing Matters

9.5 Imposition of Sentence

E. Probation

5. Contents of Probation Orders

Effective January 1, 2005, 2004 PA 219 amended MCL 771.3 to allow the court to impose an additional condition on probationers. After the fourth bullet on page 461, insert the following bullet:

- ♦ Participate in a drug treatment court. Note, however, that persons charged with or who have pled guilty to “criminal sexual conduct of any degree” are ineligible for drug treatment court. MCL 600.1060(g)(i) and MCL 600.1064(1).

6. Delayed Sentencing

Effective January 1, 2005, 2004 PA 219 amended MCL 771.1(2) to allow for an offender’s participation in drug treatment court. In the paragraph beginning at the bottom of page 461, change the quotation of MCL 771.1(2) to read “eligibility for probation or other leniency compatible with the ends of justice and the defendant’s rehabilitation, such as participation in a drug treatment court under . . . MCL 600.1060 to 600.1082.” Note, however, that persons charged with or who have pled guilty to “criminal sexual conduct of any degree” are ineligible for drug treatment court. MCL 600.1060(g)(i) and MCL 600.1064(1).

CHAPTER 10

Other Remedies for Victims of Sexual Assault

10.3 Defenses to Civil Actions

A. Statutes of Limitations for Civil Actions

2. Commencement of Limitations Period and the “Discovery Rule”

Insert the following text before the November 2002 update to page 486:

A plaintiff’s claim of fraudulent concealment under MCL 600.5855 requires the plaintiff to establish that the conduct on which the fraudulent concealment claim is based prevented the plaintiff from knowledge of his or her claim against the defendant. *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, ___ Mich App ___, ___ (2004). In *Doe*, the plaintiff claimed that the statute of limitations on his tort action should be tolled by the defendant’s concealment of plaintiff’s claims against the defendant.

The plaintiff claimed that the defendant knew about and purposely concealed Burkholder’s (a priest’s) history of sexual abuse by moving the priest from diocese to diocese and that this conduct prevented the plaintiff from knowing that other complaints had been lodged against Burkholder and that the plaintiff himself had legal recourse against the defendant. *Doe, supra* at _____. The Court of Appeals disagreed:

“[E]ven if plaintiff did not know for certain that defendant knew of Burkholder’s abuse of other children, defendant’s knowledge of Burkholder’s abuse of other children was not required for plaintiff to be aware of his causes of action against defendant.

* * *

“It was not necessary for plaintiff to know of widespread abuse in the church for him to have had knowledge of his causes of action against defendant. Thus, even if defendant attempted to conceal the “widespread sexual abuse” problem from the public at large, this attempt could not have concealed from plaintiff his causes of action against defendant.” *Doe, supra* at _____.

The Court explained that the actions on which the plaintiff based his fraudulent concealment claim “amount[ed] to mere silence,” conduct that is insufficient to support an exception to the applicable statute of limitations on tort claims. Accordingly, the Court ruled that the plaintiff’s claims were time-barred because the fraudulent concealment exception under MCL 600.5855 did not apply.

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.6 Law Enforcement's Retention of Fingerprints, Arrest Card, and Description

B. Mandatory Reporting By Clerk of Court on Final Dispositions

Effective January 1, 2005, 2004 PA 220 amended MCL 769.16a to expand the list of dispositions that the clerk must report to the State Police. On page 547 at the end of the first full paragraph add the following text:

The report must also include the sentence if imposed under MCL 750.350a (parental kidnapping) and MCL 600.1076(4) (discharge and dismissal of drug treatment court proceedings). MCL 769.16a(1)(b)–(c).